



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 1, 1997

Ms. Esther L. Hajdar  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2981

OR97-2618

Dear Ms. Hajdar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110492.

The University of Texas Southwestern Medical Center (the "medical center") received a request for four categories of information concerning a former employee. The requestor is an attorney who represents the former employee. You claim that the requested information is excepted from disclosure by section 552.103 of the Government Code. You have submitted a sample of the requested documents for our review.<sup>1</sup>

The requestor in this instance argues that the medical center failed to seek an attorney general decision within ten calendar days after receiving her request for information. This office received the medical center's request for a decision to withhold information on September 4, 1997. The requestor has shown, by providing a copy of the return receipt from the U.S. Post Office, that the medical center received the request for information on August 23, 1997. The return receipt was signed by an agent of the medical center. You argue that the medical center merely picked up the request letter from the U.S. Post Office on August 23, 1997, a Saturday, as a matter of routine. You explain that

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[a]t that time the mail-room clerk must sign the return-receipt cards for all certified mail. The Medical Center does not conduct business on Saturday, there is no internal mail delivery on Saturday, and the process of internal mail delivery is not started until Monday when receipt of the certified letter is logged into the computer system and then delivered to the department.

You have demonstrated that the medical center's computer system log reflects that the correspondence was delivered to and received by the person it was addressed to on Monday, August 25, 1997 through the medical center's internal mail delivery.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). This office has previously stated that

[w]here a request has been directed to a responsible person in a position of authority, the agency cannot ignore the request simply because it may not have been directed to the legal custodian of the records. Section 7(a) [statutory predecessor to section 552.301] *only requires receipt by the governmental body.*

Open Records Decision No. 44 (1974) at 2 (emphasis added); *see* Open Records Decision No. 497 (1988). It is apparent and you do not dispute that an agent of the medical center received the request for information on August 23, 1997 from the U.S. Post Office. Thus, the medical center, as a governmental body, received the request on August 23, 1997. You did not seek a decision from this office until September 4, 1997. Consequently, you have not met your statutory burden. Gov't Code 552.301.

When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The requested information at issue is therefore presumed public.<sup>2</sup>

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<sup>2</sup>Generally, section 552.103 does not provide a compelling demonstration to overcome the presumption of openness. Open Records Decision No. 473 (1987).

We note, however, that some of the information contained in the documents submitted to this office for review is excepted from disclosure by common-law privacy under section 552.101 of the Government Code and presents a compelling reason to overcome the presumption of openness. See Open Records Decision No. 473 (1987). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Based on *Ellen*, we believe that the medical center must withhold the individual witness statements in which the alleged sexual harassment is discussed and the witnesses' identities. There exists an adequate summary of the sexual harassment investigation in the documents provided to this office: The introduction and the summary and conclusion section of the Memorandum dated June 23, 1997 must be released. We also find that the public interest in the statement of the alleged harasser outweighs any privacy interest he may have in that information. Therefore, the medical center may not withhold this information. We have marked the information in the submitted documents that must be withheld.<sup>3</sup> With the exceptions noted, the medical center may not withhold the remaining requested documents.

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<sup>3</sup>We note that since the identity of the victim to the alleged sexual harassment is protected by the common-law privacy doctrine as applied in *Ellen* and *Industrial Foundation*, the name of the individual must be redacted before any information may be released to the public. However, you may not withhold this information under section 552.101 on the basis of protecting a requestor's own common-law privacy interests. Open Records Decision No. 481 (1987) at 4. Thus, the victim's name need not be redacted prior to releasing the requested information here; the requestor is the attorney of the alleged victim.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, flowing style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 110492

Enclosures: Marked documents

cc: Ms. Genice A.G. Rabe  
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(w/o enclosures)